

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA, ex rel.)	
TUESDAE STAINBROOK, D.O., M.P.H.,)	
MARY SIMPSON, M.B.A., and)	
JONATHAN POPE, M.D., Ph.D.,)	CIVIL ACTION No. 16-244
)	
Plaintiffs,)	FILED UNDER SEAL
)	PURSUANT TO
)	31 U.S.C. § 3730(b)(2)
vs.)	
)	
BROOKVILLE HOSPITAL,)	
CLEARFIELD HOSPITAL, DUBOIS REGIONAL)	
MEDICAL CENTER, ELK REGIONAL)	
HEALTH CENTER, INC., GARY OTT,)	
M.D., PENN HIGHLANDS HEALTHCARE,)	
and WOMEN'S CARE OF WESTERN)	
PENNSYLVANIA, LLC,)	
)	
Defendants.)	

**THE UNITED STATES OF AMERICA'S NOTICE OF ELECTION TO INTERVENE,
IN PART, FOR PURPOSES OF SETTLEMENT AND
TO DECLINE TO INTERVENE, IN PART**

The United States of America, pursuant to the False Claims Act (“FCA”), 31 U.S.C. § 3730(b)(2) and (4), and in accordance with this Court’s prior Orders and the Local Rules of this Court, notifies this Court of its decision to intervene in this action, in part, for purposes of effectuating a settlement with Tuesdae Stainbrook, D.O., M.P.H., Mary Simpson, M.B.A., and Jonathan Pope, M.D. (“Relators”) and Defendants Penn Highlands Healthcare, DuBois Regional Medical Center, Elk Regional Health Center, Inc., Clearfield Hospital, Brookville Hospital (collectively, “Penn Highlands”) related to certain conduct alleged in the *qui tam* Complaint and Amended Complaint, and to decline to intervene, in part, to the remaining allegations in the Complaint and Amended Complaint and as to the other named Defendants, as more fully described below:

1. On October 11, 2016, Tuesdae Stainbrook, D.O., M.P.H., Mary Simpson, M.B.A., and Jonathan Pope, M.D. (“Relators”) initiated this action by filing a *qui tam* Complaint against Defendants Penn Highlands Healthcare, DuBois Regional Medical Center, Elk Regional Health Center, Inc., Clearfield Hospital, Brookville Hospital, Gary Ott, M.D., and Women’s Care of Pennsylvania LLC. In the Complaint, Relators allege that these Defendants submitted false claims to Medicare and/or other federal health care payors for: (a) referrals that violated the Physician Self-Referral Law, 42 U.S.C. § 1395nn (“Stark Law”) and the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b) (“AKS”), as a result of the improper financial relationship between Penn Highlands and Dr. Ott and his obstetrics and gynecology (“OBGYN”) practice, Women’s Care of Western Pennsylvania, LLC; (b) procedures performed by mid-level providers, but improperly billed as being provided “incident to” physician services; (c) services billed as Rural Health Clinic services that were not actually provided at certified Rural Health Clinics; and (d) for certain “swing bed” services that were not medically necessary or otherwise proper.

2. On October 21, 2016, Relators served the United States with a copy of the Complaint, along with the “written disclosure” required by 31 U.S.C. § 3730(b)(2).

3. On August 25, 2020, Relators served the United States with a copy of the Amended Complaint, naming Penn Highlands, Dr. Ott, and Women’s Care as Defendant, along with Kelly Duckett, M.D. In the Amended Complaint, Relators alleged that Penn Highlands violated the Stark Law and the AKS by acquiring another OBGYN practice, Life’s Journey OBGYN, P.C., owned by Dr. Duckett.

4. Since the filing of the Complaint, the United States has engaged its statutorily required investigation of Relators’ *qui tam* allegations; requested and received a series of six-month extensions of the seal period to enable it to complete its investigation; obtained partial lift

of the seal, in order to provide a copy of the *qui tam* Complaint to Penn Highlands and engaged in fruitful settlement discussions with Penn Highlands, through counsel.

5. In that regard, the United States and Penn Highlands have reached an agreement, in principle to settle certain of the claims against Penn Highlands alleged in the Complaint and Amended Complaint.

6. Therefore, the United States notifies this Court of its intent to intervene, in part, to finalize that settlement, pursuant to 31 U.S.C. § 3730(c)(3). Specifically, the United States notifies the Court of its intent to intervene as to the claim that Defendants violated the False Claims Act by submitting false claims to Medicare and/or other federal health care payors for referrals that violated the Stark Law and the AKS, arising from the payment of Four Hundred and Twenty Thousand Dollars and Zero Cents (\$420,000.00) by Dubois Regional Medical Center to Gary Ott and Heather Sholtis, D.O, for “employment services” performed between July 1, 2008, to June 30, 2009. This payment was made pursuant to Section 6(e) of the Consulting, Medical Director and Related Services Agreement (“Medical Director Agreement”) between Dubois Regional Medical Center and Women’s Care of Pennsylvania, LLC, which was effective July 1, 2009, through June 30, 2012. This conduct is referred to in the Settlement Agreement as the “Covered Conduct.” The United States declines to intervene as to the remainder of the allegations and claims in Relators’ Complaint and Amended Complaint; to wit, the claims that Penn Highlands violated the Stark Law and AKS (a) in the acquisitions of Women’s Care and Life’s Journey, and in the Medical Director Agreement (except as defined above with respect to the Covered Conduct); (b) by improperly billing procedures performed by mid-level providers as being provided “incident to” physician services; (c) by billing services as Rural Health Clinic services that were not actually provided at certified Rural Health Clinics; and (d) by billing for certain “swing bed” services that were not

medically necessary or otherwise proper. The United States also declines to intervene as to any claims against Gary Ott, M.D., Women's Care of Western Pennsylvania, LLC, and Kelly Duckett, M.D.¹

7. In accordance with this Notice, and pursuant to 31 U.S.C. § 3730(c)(3), the United States also requests that:

- a. Going forward, all pleadings filed in this action be served upon the United States, and all orders issued by the Court be sent to the United States' counsel;
- b. Relators' Complaint, Relators' Amended Complaint, this Notice, the attached proposed Order, and all future filings in this matter, be unsealed;
- c. All other, previously filed papers in this action remain under seal, because in discussing the content and extent of the United States' investigation, such papers were provided to the Court alone for the sole purpose of evaluating whether the seal and time for making an election to intervene should have been extended.

8. Finally, the United States notes that, to the extent a final settlement agreement is not reached in the next 60 days, the United States reserves its right to file an amended Notice of Intervention and to file a Complaint in Intervention, in accordance 31 U.S.C. §§ 3730(b)(5) and (e)(4).

¹ Notwithstanding the foregoing, the United States reserves its right to intervene – for good cause and at a later date – in any part of the action that is currently declining. And, to the extent Relator decides to maintain the declined claims, the United States also reserves the right to seek the dismissal of any such claim on any appropriate grounds, including under 31 U.S.C. §§ 3730(b)(5) and (e)(4).

WHEREFORE, the United States respectfully informs this Court of its intent to intervene, in part, in this action, and to assume the prosecution of the case for purposes of effectuating a settlement with Penn Highlands based on the Covered Conduct defined above and its election to decline, in part, as to certain other allegations in the Relators' Complaint and Amended Complaint. The United States further requests that the Court enter the attached proposed Order.

Dated: February 20, 2024

Respectfully submitted,

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/s/ Ryan Wilk _____
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